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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 LANITA K.,

10 Plaintiff,

CASE NO. C18-1590-MAT

11 v.

ORDER RE: SOCIAL SECURITY  
DISABILITY APPEAL

12 ANDREW M. SAUL,  
Commissioner of Social Security,<sup>1</sup>

13 Defendant.

14 Plaintiff proceeds *pro se* in her appeal of a final decision of the Commissioner of the Social  
15 Security Administration (Commissioner). The Commissioner denied Plaintiff's applications for  
16 Supplemental Security Income (SSI) and Disability Insurance Benefits (DIB) after a hearing  
17 before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the  
18 administrative record (AR), and all memoranda of record<sup>2</sup>, this matter is AFFIRMED.

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21 <sup>1</sup> Andrew M. Saul is now the Commissioner of the Social Security Administration. Pursuant to Federal Rule  
of Civil Procedure 25(d), Andrew M. Saul is substituted for Nancy A. Berryhill as defendant in this suit.

22 <sup>2</sup> Plaintiff did not file an opening brief, and the Court issued an order to show cause why the case  
23 should not be dismissed for failure to comply with the scheduling order. Dkt. 14. Plaintiff failed to respond  
to the show cause order, and the Court construed her complaint as her opening brief. Dkt. 15. Plaintiff did  
not object to this, or file a reply to the Commissioner's brief. Although the Commissioner requests that  
Plaintiff's case be dismissed for failure to comply with the Court's orders (Dkt. 16 at 5), the Court

1 **FACTS AND PROCEDURAL HISTORY**

2 Plaintiff was born on XXXX, 1968.<sup>3</sup> She has one year of college education, and has  
3 worked as an office manager. (AR 529, 535.)

4 Plaintiff applied for SSI and DIB in January 2015. (AR 497-506.) Those applications were  
5 denied and Plaintiff timely requested a hearing. (AR 404-427, 431-44.)

6 On February 27, 2017, ALJ Larry Kennedy held a hearing, taking testimony from Plaintiff  
7 and a vocational expert (VE). (AR 260-307.) On September 21, 2017, the ALJ issued a decision  
8 finding Plaintiff not disabled. (AR 22-37.) Plaintiff timely appealed. The Appeals Council denied  
9 Plaintiff's request for review on August 30, 2018 (AR 1-5), making the ALJ's decision the final  
10 decision of the Commissioner. Plaintiff appealed this final decision of the Commissioner to this  
11 Court.

12 **JURISDICTION**

13 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

14 **DISCUSSION**

15 The Commissioner follows a five-step sequential evaluation process for determining  
16 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must  
17 be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had not  
18 engaged in substantial gainful activity since September 23, 2011, the alleged onset date. (AR 25.)  
19 At step two, it must be determined whether a claimant suffers from a severe impairment. The ALJ  
20 found severe Plaintiff's post-herpetic neuralgia, degenerative disk disease of the lumbar spine, and

21  
22 nonetheless considers the merits of Plaintiff's challenge to the ALJ's decision and, for the reasons explained  
herein, finds no reason to disturb the ALJ's findings.

23 <sup>3</sup> Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

1 major depressive disorder. (AR 25-26.) Step three asks whether a claimant's impairments meet  
2 or equal a listed impairment. The ALJ found that Plaintiff's impairments did not meet or equal  
3 the criteria of a listed impairment. (AR 26-28.)

4         If a claimant's impairments do not meet or equal a listing, the Commissioner must assess  
5 residual functional capacity (RFC) and determine at step four whether the claimant has  
6 demonstrated an inability to perform past relevant work. The ALJ found Plaintiff capable of  
7 performing light work with additional limitations: she can occasionally balance, stoop, kneel, and  
8 crouch. She can never climb or crawl. She must avoid concentrated exposure to extreme cold,  
9 vibration, pulmonary irritants, and hazards. She can perform simple, routine tasks and follow  
10 short, simple instructions. She can do work that needs little or no judgment and can perform simple  
11 duties that can be learned on the job in a short period. She must work with minimal supervisor  
12 contact (defined as contact that "does not preclude all contact, rather, it means contact does not  
13 occur regularly. Minimal contact also does not preclude simple and superficial exchanges and it  
14 does not preclude being in proximity to the supervisor"). She can work in proximity to co-workers,  
15 but not in a cooperative or team effort. She can have no more than superficial interaction with co-  
16 workers. She cannot interact with the general public as in as sales position or where the general  
17 public is frequently encountered as an essential element of the work process, but incidental  
18 superficial contact with the general public is not precluded. (AR 28.) With that assessment, the  
19 ALJ found Plaintiff unable to perform her past relevant work. (AR 35.)

20         If a claimant demonstrates an inability to perform past relevant work, the burden shifts to  
21 the Commissioner to demonstrate at step five that the claimant retains the capacity to make an  
22 adjustment to work that exists in significant levels in the national economy. With the assistance  
23 of the VE, the ALJ found Plaintiff capable of performing other representative occupations, such

1 as agricultural sorter, office helper, electrical accessories assembler, semiconductor wafer breaker,  
2 semiconductor die loader, and table worker. (AR 36-37.)

3 This Court's review of the ALJ's decision is limited to whether the decision is in  
4 accordance with the law and the findings supported by substantial evidence in the record as a  
5 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means more  
6 than a scintilla, but less than a preponderance; it means such relevant evidence as a reasonable  
7 mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d 747, 750  
8 (9th Cir. 1989). If there is more than one rational interpretation, one of which supports the ALJ's  
9 decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.  
10 2002).

11 Plaintiff's complaint suggests that the ALJ erred in assessing her testimony, failing to  
12 develop the record, failing to follow procedures for questioning the VE or assessing a treating  
13 doctor's opinion, and failing to discuss her medication side effects. Plaintiff also alleges that the  
14 ALJ's decision omits important testimony and that exhibits were removed after the hearing. Dkt.  
15 4 at 3. The Commissioner argues that the ALJ's decision is supported by substantial evidence and  
16 should be affirmed.

17 Subjective symptom testimony

18 The ALJ discounted Plaintiff's testimony for a number of reasons, citing (1) treatment  
19 records documenting a lack of objective evidence of pain, and/or that her pain medication  
20 stabilized her pain; (2) evidence that she could sit longer than she alleged; (3) evidence  
21 demonstrating her disability conviction, such as her "efforts to coerce at least two different  
22 providers into changing their DSHS [form opinions]"; (4) a lack of mental health treatment until  
23 September 2014, upon the recommendation of DSHS, despite alleging disability as of September

2011; (5) evidence showing that her symptoms flared due to situational stressors, such as moving and conflict with a medical provider; (6) evidence showing that her mental health improved with treatment; and (7) her inaccurate representations regarding the end of her treatment at Compass Health in 2016. (AR 29-32.)

In the Ninth Circuit, an ALJ's reasons to discount a claimant's allegations must be clear and convincing, as required in the Ninth Circuit. *Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014). In this case, the ALJ provided many legally sufficient reasons to discount Plaintiff's symptoms. Although Plaintiff describes the ALJ's findings as based on "speculative conjecture, not supported by [the] record as a whole" (Dkt. 4 at 3), the ALJ's reasons are specific and cite to substantial evidence in the record. (AR 29-32.)

One of the most convincing reasons the ALJ provided for discounting Plaintiff's allegation of disability is the evidence of her disability conviction, specifically her efforts to coerce her primary care physician into changing opinions in order to support her claim for disability. (See AR 1229, 1231, 1233-34.) The ALJ also provided detailed findings regarding the objective evidence related to Plaintiff's physical and mental health, showing that the record demonstrated significant improvement with treatment. (AR 30-31.) The ALJ's reasons are amply supported, and easily satisfy the substantial evidence standard. Accordingly, the ALJ's findings in this regard shall not be disturbed.

#### Duty to develop the record

Plaintiff suggests that the ALJ erred in failing "to develop records for [a] factual narrative[.]" Dkt. 4 at 3. Plaintiff also accuses the ALJ of omitting important testimony, and removing exhibits from the file after the hearing. *Id.* Without more specific allegations, Plaintiff has failed to establish error on these grounds. The ALJ allowed Plaintiff to review the file after

1 the hearing and submit any missing records, which Plaintiff did, and she also submitted additional  
2 records to the Appeals Council. (AR 22-23, 47-228, 298-307, 1306-1408.) There is no evidence  
3 to suggest that the ALJ failed to develop the record or omitted any evidence from the record, and  
4 therefore Plaintiff has failed to meet her burden to show error in this regard.

#### 5 Medical evidence

6 Plaintiff contends that the ALJ failed to follow the proper procedures for assessing a  
7 treating doctor's opinion, but does not identify which doctor or which opinion. Dkt. 4 at 3. The  
8 ALJ thoroughly discussed the medical opinions in this case. (AR 32-35.) Plaintiff has not  
9 identified an opinion that the ALJ failed to assess, or shown that the ALJ's reasons for assigning  
10 weight to certain opinions were insufficient. Accordingly, Plaintiff has failed to establish error in  
11 this regard.

#### 12 VE questioning

13 Plaintiff argues that the ALJ failed to follow the proper procedures for questioning the VE.  
14 At the hearing, the ALJ questioned the VE and allowed Plaintiff an opportunity to question the VE  
15 as well. (AR 290-97.) The Court's review of that questioning does not reveal any improprieties,  
16 and therefore the Court finds that Plaintiff has failed to establish error regarding the VE testimony.

#### 17 Medication side effects

18 Plaintiff contends that the ALJ failed to discuss her serious medication side effects. Dkt.  
19 4 at 3. The ALJ did, however, discuss Plaintiff's testimony related to medication side effects,  
20 specifically insomnia, in his section on Plaintiff's subjective allegations. (AR 29.) Plaintiff has  
21 not identified a particular medication side effect that the ALJ failed to address, or pointed to  
22 evidence showing that her medication side effects caused workplace limitations not considered by  
23 the ALJ. Accordingly, Plaintiff has failed to show harmful legal error with respect to medication

1 side effects. *See Miller v. Heckler*, 770 F.2d 845, 849 (9th Cir. 1985) (claimant has the burden of  
2 producing evidence that his use of prescription narcotics impaired his ability to work, but failed to  
3 do so).

4 **CONCLUSION**

5 For the reasons set forth above, this matter is AFFIRMED.

6 DATED this 26th day of June, 2019.

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9 Mary Alice Theiler  
United States Magistrate Judge